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Nos. 00-132 and 00-133

Supreme Court, U.S.
FILED
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In the

Supreme Court of the United States

DARRYL SINKFIELD, *et al.*
and
JAMES BENNETT, in his official capacity as
Secretary of State of Alabama, *et al.*,

Appellants,

v.

PEGGY KELLEY, *et al.*,

Appellees.

On Appeal From the United States District Court
For the Middle District of Alabama

MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO AFFIRM

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Where the district court enjoined the future use of several state legislative districts, each of which was challenged by a resident plaintiff as a racial gerrymander, was the rule of *U.S. v. Hays* violated?

2. Did the district court correctly apply this Court's decisions in *Shaw v. Reno* and *Miller v. Johnson* to find that seven Alabama State House and Senate Districts were unconstitutional racial gerrymanders?

3. Did the district court properly conclude that neither laches, mootness, preclusion arising from state court proceedings, nor imminence of the census barred relief?

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MOTION

Pursuant to Rule 18.6, Appellees respectfully move the Court to affirm the judgment below, which enjoins James Bennett, Secretary of State of Alabama, from conducting further elections using the present Alabama State House Districts 63, 75, and 86 and State Senate Districts 21, 25, 29, and 30, and which declares these seven districts to violate the Equal Protection Clause. The majority of the panel thus found each of these districts to be unconstitutionally race-based, and not narrowly tailored to further any compelling governmental interest. The well-reasoned majority opinion below is supported by the record, consistent with recent jurisprudence enforcing the Equal Protection Clause of the Fourteenth Amendment, and warrants summary affirmance under *Shaw v. Reno*, 509 U.S. 603 (1993)("*Shaw I*"), *Miller v. Johnson*, 515 U.S. 900 (1995), *Bush v. Vera*, 517 U.S. 952 (1996) and *Shaw v. Hunt*, 517 U.S. 899 (1996) ("*Shaw II*").

STATEMENT OF THE CASE

The Kelley Plaintiffs do not find it necessary to undertake a description of the procedural development of the case in a way that differs from the description provided by the Appellants, except as may be reflected in the Argument.

STATEMENT OF FACTS

The Kelley Plaintiffs urge the Court to consider the following facts in addition to those presented by the Appellants, especially to appreciate the procedural defenses that assert no standing to challenge the district in which each plaintiff resides, and the defense that a new districting plan is imminent.

"The Alabama Legislature has a history of being unable to reapportion itself as required by the Alabama Constitution, without court intervention." Appendix to Jurisdictional Statements ("App.") at 161a. The period after the 1990 census was no exception. The districts under review were placed into effect pursuant to a state court consent decree between Sinkfield and the predecessor to Bennett. App. 126a-131a. None of the Kelley Plaintiffs are parties to that decree, and no other resident of those districts is a party to the decree. The only parties were the Sinkfield class and Bennett's predecessor; and Sinkfield was "certified to represent a class of all African-American citizens of Alabama . . . . ." App. 127a.

An initial review of the districts at issue in the proceedings below demonstrates some of the problems with Alabama's state legislative plan. The trial court described one of the districts as a "squashed butterfly," another as composed of "bizarre" "jagged fragments," another as two lobes connected by "a 25-mile-long land bridge," and yet another as two lobes connected by a three-mile-wide strip of uninhabited river bottom. In each district, census blocks are allocated along boundaries with adjacent districts to establish crisp patterns of racial division. As further review shows, these features are the direct result of a clear objective by the architect of the plan, who had unabashed racial intentions.

Each of the following senate districts, where at least one plaintiff resided, was found to be racially gerrymandered.

Senate District 21. This district is largely in Tuscaloosa County, where the main University of Alabama campus is located. A quick view of the map of SD 21, compared with previous districts in the county, shows that the southern portion of the county is no longer together in one district. App. 17b. A highly irregular swath of southern Tuscaloosa County has been excised, and included in SD 24 to the south. In its place, a large section of majority white Pickens County to the west has been included, and the overall effect graphically is to give SD 21 the look of a "squashed butterfly." App. 32a. The

district court reports that the portion excised-- between the wings of the butterfly-- is 64% black, whereas the Tuscaloosa County portion of SD 21 is 86% white. App. 31a and 32b.

The trial court also undertook a census block review of the boundary between the excised portion of southern Tuscaloosa County included in SD 24 and SD 21. App. 30a-31a. This review shows that majority white census blocks along the boundary are included in SD 21, while majority black census blocks are included in SD 24, *Id.*, and it is this segregation of the census blocks which gives SD21 much of the center of its "squashed butterfly" appearance.

Senate District 25. This Montgomery area district is one of two senate districts in Montgomery County, the other being SD 26. The net effect of the 1993 plan was to make the two senate districts located in Montgomery County more sharply segregated in racial terms. App. 33a.

As presently configured, SD 25 is actually composed of two lobes. App. 18b. One lobe in Montgomery County is joined with another lobe in Elmore County to the north by a bridgeless, three-mile-wide strip consisting of uninhabited river bottom and the city dump. App. 33a. The "eastern boundary runs neatly between the edge of majority-white suburbia and the mostly black rural areas." App. 35a. The western boundary of SD 25 divides the "the whiter east half of Montgomery from the blacker west half." App. 35a. There is said to be a turn eastward "to exclude from SD 25 the black neighborhoods of Montgomery's northeast side" and a "large detour" to leave a military installation out of SD 25. App. 35a. There was no evidence that this construction occurred at the request of the SD 25 incumbent. App. 35a.

The plan split ten precincts in Montgomery County alone. App. 1b and App. 7b. Notable is the split of the neighborhood at North Montgomery Community Center, where 85.2% of those placed inside SD 25 are white, and only 11.1% placed outside in SD 26 are white. Similarly, of those who vote at

Normandale Library, 84.8% assigned to SD 25 are white; but only 32.5% of those placed in SD 26 are white. App. 13b-14b.

Senate District 29. Senate District 29 is located in the southeastern corner of Alabama, with a large portion of its border directly adjacent to Georgia and Florida. This area is known as the Wiregrass region. The most notable features of SD 29 are its "jagged fragments" extending north and west in two counties, all located within the nested HD 85. App. 40a. The northwestern boundary of SD 29 is utterly "bizarre." App. 42a.[1]

The portion of SD 29 reflecting its "jagged fragments" was formed in part by stringing "together majority-black census blocks with connecting strips," and bypassing significantly less black census blocks which are much less distant from the core area of SD 29. App at 40a.

Senate District 30. This district is located to the west of Montgomery and runs mostly north to south. It could be described as two-lobed, with one lobe north of Montgomery County, and the second lobe south of Montgomery County. App. at 36a. Its most distinctive feature, "a 25-mile-long land bridge . . . that hugs the Montgomery County line . . ..", joins the two lobes. App. 36a. At several points, the bridge is less than one mile wide, and the "bridge" does not even contain a road connecting the north and south lobes. App. 36a-37a. A map of SD 30 is found at App. 20b. Understandably, the map depiction was labeled "bizarre" by the trial court.

The racial purposes of this land bridge are apparent when the racial make-up of the surrounding areas is considered. The

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[1]The Appellants omitted the map of SD 29 from App. 1a, the April 24, 2000 Memorandum Opinion of the three-judge court. The map of SD 29 is included in the by Appellees at App. 19b.

land bridge hugging Montgomery County runs through the neighboring county to the west, Lowndes County, by including only census blocks that are overwhelmingly white. "The SD 30 part of Lowndes County is 79% white; the rest of Lowndes County is 80% black." App. 38a. At the southern end of the Lowndes County land bridge, a municipality is split, to include in SD 30 a portion of the city which is 90% white, and to leave out a portion of the city which is 86% black. App. 38a.

As noted, the bridge joins a southern lobe and a northern lobe. The southern lobe is comprised of three counties and a portion of a fourth county, and the northern lobe is 79% white Autauga County. The overall population of SD 30 is 72% white.

The trial court noted how the inferences arising from the configuration and racial composition of these districts were explained in part by Reed's objectives in maximizing *black* representation. *See* App. 28a (SD 21); App. 34a (SD 25); App. 36a-37a (SD 30); App. 39a-41a (SD 29).

House Districts — The trial court also found that three districts of the Alabama House of Representatives were reflective of predominantly racial motives in derogation of traditional districting principles. Each of these districts is "nested" in a separate one of the senate districts discussed above, and also found to be a racial gerrymander. The particular districts are HD 63, HD 75, and HD 86. The house districts are discussed by the trial court in the section of the Memorandum Opinion in which the house district's corresponding senate district is discussed. *See* App. 27a- 33a (HD 63); 33a-36a (HD 75); App. 39a-43a (HD 86). Maps of HD 63, HD 75, and HD 86 are found at App. 21b, 22b, and 23b, respectively.

The Architect– The trial court found that much of this district handiwork was driven by racial objectives focused in a larger way on increasing the number of black elected officials. The state itself confirmed this in 1993, after the state trial court entered its partial consent judgment adopting the Reed-Buskey

plan, and the state urged preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c by emphasizing "the Plan's deliberate creation of enough majority-black districts to assure nearly proportional representation in the legislature." App. 20a n.14.

The State's perspective accurately reflected the purposes of the plan's architect, Dr. Joe Reed. He was dissatisfied with the previous plan of reapportionment "insofar as it did not achieve proportional black representation . . ." App. 20a. In his drafting, Reed "set out to maximize the number of black representatives and senators elected to the legislature by maximizing the number of black-majority districts." App. 21a.

Reed also testified as to the process by which he constructed the districts. While racial data after the 1980 census had only been available for individual blocks in the cities (Tr. at 29), after 1990, the redistricting computers of Alabama contained racial data for every individual census block in the state. Tr. at 40. For divided counties, districts were drawn using block level data; for it was "necessary" that "if you divided the county in some fashion you did it on a census block level." *Id.* Dr. Reed agreed that "when you worked on the computers you had the information before you at all times as you are drawing the district lines as to the race of the population." Tr. at 53. For many of the districts, "as you were drawing the districts you had the race of the population depicted so that you could be aware of that information when you drew the district lines." Tr. at 57. App. 30b.

Nowhere in the facts recited by either the State of Alabama or the Sinkfield Appellants is there any mention of the extensive evidence of split communities and precincts. Just for the seven invalidated districts, 29 precincts were split to form the three house districts, and 56 were split to form the four senate districts. App. 1b-16b. A score of cities and towns were split, including localities as small as Abbeville, Daleville, Fort Deposit, Headland, Kinsey, Millbrook, Moundville, Newton, and Taylor, all with fewer than 10,000 persons. App. 36b -

39b. Such splits are not required by the population requirements of Alabama districts, whose house districts average 38,000 in size and whose senate districts are 115,000 on average.

The Districts Found Not Racially Gerrymandered— The trial court found a number of districts challenged not to be predominantly race-based. SD 34 in the Mobile area was found to be a result of some racial population alterations from its previous composition; but the effects were said to be not significant enough to warrant strict scrutiny. App. 45a. Similarly, the evidence with respect to HD 89, which was adjacent to the "jagged fragments" of SD 29 in the southeastern part of the state, was found insufficient to warrant strict scrutiny. App. 42a-43a.

Prior to trial, the district court entered judgment against the plaintiffs on their challenges to three house districts: HD 88, HD 82, and HD 73. *See* App. 224a; App. 232a; App. 242a. Each house district is located in the central portion of the state in or near Montgomery County, and was said to be only a product of a general racial strategy, rather than reflective of moving specific census blocks because of their racial composition.

ARGUMENT

The trial court correctly applied now-settled precedents to find that each of the individual plaintiffs had standing to challenge four state senate districts, as well as three state house districts. The court correctly dismissed alternate political explanations and, after evaluating a mass of evidence at trial and from depositions and exhibits, determined that each invalidated district reflected the assignment of a significant number of persons on the basis of race and substantially subordinated traditional race-neutral principles. App.1a -54a.

The Court further was correct that neither the proper application of the doctrine of mootness, the equitable defense

of laches, nor the nature of available relief prevented consideration of the merits of each plaintiff's claim.

I. The District Court Properly Applied *United States v. Hays*, 515 U.S. 737 (1995) and Determined That Each Plaintiff Had Standing To Challenge The District In Which He Resided. *(Responding to Bennett Question 1 and Sinkfield Question 1).*

This case reflects a straightforward application of the rule of standing to assert claims grounded in *Shaw v. Reno*, 509 U.S. 603 (1993)("Shaw I"), and its progeny. The district court correctly determined that *Hays* provides that a *Shaw* plaintiff satisfies "the first element of Article III standing, injury-in-fact, by showing (1) that he lives in the district he challenges and (2) that the district is 'racially gerrymandered.'" App. at 5a-7a (citing *Bush v. Vera*, 517 U.S. 952, 957-58 (1996) or *Shaw v. Hunt*, 517 U.S. 899, 904 (1996) ("*Shaw II*")). The district court duly noted this Court's treatment of the subject of standing in these cases, particularly that there had been no suggestion that residence in a gerrymandered district was insufficient. The district court also rejected the proposal from the Appellants that the "harm be subjectively felt by the plaintiff." App. 7a.

There is no dispute that at least one of the plaintiffs resides in each district found unconstitutional by the trial court.[2] The court below correctly determined the claims of the lawsuit to be seven different individual districts, each of different demographic composition, in four different regions of the state; but similar in that each district reflects the establishment of boundary lines by the systematic division of census blocks

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[2]Ricardo Montiel lives in SD 21 and HD 63, Genae Spinks lives in SD 25 and HD 75, Daniel Brown lives in SD 25, Bibb Gunter lives in SD 29 and HD 86, and Peggy C. Kelley and Karen D. Outlaw live in SD 30. Karen D. Outlaw also lives in HD 89.

according to their racial composition and resulting separation of small towns, neighborhoods, and voting precincts in the same way. App. 32b-39b.

Appellants essentially disagree with the determination by the trial court that each plaintiff challenged his own district. However, the trial court determined correctly that the "primary focus" of the complaint of each plaintiff was that a significant number of persons were placed into or outside of the very district in which each resides, App. at 3a-4a, and that this was done in a manner which offended and subordinated traditional districting principles. This "primary focus" of the claim is evident from the complaint itself. *See* App. 146a -149a.

Bennett is incorrect in his assertion that the plaintiffs complain in the same way as the *Hays* plaintiffs, i.e., merely that their districts would have looked different if adjacent black-majority districts were drawn differently. Jurisdictional Statement (of James Bennett) ("Bennett") at 13. Similarly, despite Bennett's suggestion, there has been no adjudication about "the neighboring black-majority districts." *Id.* at 17. The district court's injunction operates against the districts in which the plaintiffs reside, and against no other districts. There is no injunction against any of the districts that are majority black, as no plaintiff resides in any such district.

This "primary focus" is corroborated from the evidence offered at trial that traditional principles were sacrificed in the formation of each individual district in which each plaintiff resides. In at least one respect, Bennett accepts that Plaintiff Gunter resides within the very senate district that contains the primary focus of his complaint and evidence. Bennett at 13 n.4.

Appellants cite no case where a district resident was found to lack standing to raise a *Shaw* claim against his own district; and Appellees are unaware of any. To the contrary, the district court adopted a straightforward reading of *Hays* found by other courts. *See, e.g., Dillard v. Baldwin County Commission*, 2000 WL 1275696, at *8 (11th Cir. Sept. 8, 2000)("*Hays* sets forth a bright-line rule for a particular class of cases alleging illegal

racial gerrymandering with respect to voting districts: if the plaintiff lives in the racially gerrymandered district, she has standing . . .").

The teachings of *Shaw* and *Miller* are not limited to districts of a particular racial composition. While the proof required by *Miller* may be aided by evidence of a racial plan, goal, or target, the fact that that the district court invalidated districts which overall are majority white is not somehow improper. Similarly, this invalidation is not even "unique." App at 5a.

Federal courts have applied the *Shaw* doctrine to invalidate majority white districts in other instances. *See, e.g., Hunt v. Cromartie*, No. 4:96-CV-104-BO(3)(E.D. N.C. March 7, 2000, *prob. juris. noted* June 26, 2000, 99-1864 and 99-1865); *Smith v. Beasley*, 946 F. Supp. 1174, 1176, 1202-03 (D.S.C. 1996)(3-judge court); *Johnson v. Miller*, 929 F. Supp 1529, 1550, 1542 n.31 (S.D. Ga. 1996)(3-judge court). *Shaw* does not condition judicial intervention on an assessment of the race or political power of the particular plaintiff. *Shaw I*, 509 U.S. at 641.

Appellants seem to urge that, in addition to establishing residence in a racially gerrymandered district, each plaintiff must also demonstrate that he lives in a particular part of the district which was split racially, dislikes his representative, believes that the representative acts only on behalf of one race of constituents, or feels racially stigmatized. Jurisdictional Statement of Darryl Sinkfield, et al. ("Sinkfield") at 22-24; Tr. at 1449, 1453, and 1459. None of these extra requirements is supported by this Court's application of the standing rule of *Hays* in *Bush* or *Shaw II*. When considered more deeply, Appellants propose that every *Shaw* claim begin with a separate trial over what districts are really "the focus" of the case, notwithstanding the terms of the Complaint.[3] This

[3] Arguably, certain plaintiffs residing near the borders of majority-black districts illustrated a personal exclusion from the adjacent district by race. E.g., Tr. at 488. The plaintiffs were understandably offended by the structure of their own districts, and only concerned about their several neighbors to the degree each divided communities and neighborhoods along

approach would inject confusion and uncertainty into the standing analysis, and likely expend substantial judicial resources investigating individual districts other than those challenged in the pleadings. Given the level of consideration afforded this idea in the lower courts generally, review in this Court is premature.

In summary, each resident plaintiff has standing to challenge his own district as a racial classification violative of the Equal Protection Clause.[4] With the "benefit of *Hays*'s district-limited standing rule" the plaintiffs made clear repeatedly that they challenged the districts in which they resided. App. at 3a; Tr. at 1428.

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a boundary shared with the district in which a plaintiff resided. *See, e.g.*, Tr. at 619-20. If a future designer can draw the adjacent districts to achieve similar goals without fracturing small communities or neighborhoods, picking apart voting precincts block by block on the basis of race, or otherwise substantially disregarding traditional districting principles, then such districts may survive any *Shaw* challenge.

[4] Bennett also wrongly attacks the order of discussion by the district court in determining that the Plaintiffs possessed the standing to obtain a judgment in their favor. *See* Bennett at 17-18. First, the court appears unanimous in this approach. App. at 76a n.7. Second, Sinkfield also agreed with the approach. Tr. at 1481. Third, rather than invoke the concept of "hypothetical jurisdiction" rejected in *Steel Co. v. Citizens for A Better Environment*, 523 U.S. 83 (1998), as claimed by the Bennett, the district court proceeded to undertake the kind of careful and complete consideration of the injury suffered by the Plaintiffs. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In the *Steel Co.* case, the district court ruled against the plaintiffs on the merits, without finding that there was standing. In this case, the district court undertook a careful review of the facts which were found to constitute the required injury, and also constitute a portion of the merits. The case at bar does not reflect an invocation of "hypothetical jurisdiction."

II. The Trial Court Correctly Found Seven Districts To Be Unconstitutional Racial Gerrymanders.

A. The Trial Court's Findings Of Race-Based Districting Are Supported By Substantial Evidence. *(Responding to Bennett Question 5 and Sinkfield Question 5)*

Each of the Appellants lists a fifth question presented which calls into question the findings of the trial court on the issue of race and its predominance in the construction of the challenged districts. However, only Bennett includes any specific discussion of this subject in his Argument, and he does so only with respect to HD 86. Bennett at 29-30.

Bennett has not carried his burden to show that the trial court's finding about HD 86 is clearly erroneous. *See* F. R. Civ. P. 52; *Miller v. Johnson*, 515 U.S. 900, 918-19 (1995); *Rogers v. Lodge*, 458 U.S. 613, 622-23 (1982).

House District 86 is one of the three house districts nested within SD 29, which is grounded in the southeastern corner of Alabama. The problem with HD 86 is not simply that it has a common border with the "jagged fragments" of HD 85, which extend from the core of SD 29 north and west, but also that HD 85's obvious racial motivation overwhelms all of the senate district built around it – SD 29. The portions of HD 86 which reflect racial protrusions that split the City of Dothan are explainable only on racial grounds. App. 41a-42a. The district court reports that no one "point[ed] to any specific evidence to explain the race-based boundaries of HD 86." App. 42a.

Bennett's criticism of the trial court for focusing on the black population of Dothan is misplaced. Thus, Bennett's argument that the blacks of Dothan were segregated from the rest of the city in the 1983 plan is no justification for continuing the segregation. The court noted that the continued segregation could not be deemed the result of incumbent protection, because the incumbent who formerly represented

these black citizens of Dothan had been placed in HD 86. App. 42a.

Bennett's appeal to the compactness of HD 86 hardly dispels these problems. At most, it provides a basis for a more limited change of HD 86 when it must be redrawn, not that the finding of the trial court was erroneous.

B. The trial court correctly found that the alternate political explanation for these districts was not factually supported in the record. *(Responding to Sinkfield Question 2).*

Sinkfield has wrongly portrayed this case as one in which the district court's reliance on Reed's general purposes for black political advancement create a tension to be resolved between the First Amendment right of the ADC to associate and the requirement under the Fourteenth Amendment that a state comply with the mandates of *Shaw* when adopting electoral districts. Allegedly, the involvement of black political leader Joe Reed in the creation of the districts, and his general purpose to create more black districts, are activities that cannot be the basis for the trial court's order. *See* Sinkfield at 8-9; 24-25. The record does not bear out this characterization as true; and the effort to dress it up as a First Amendment infringement, or one which reflects tension with *Shaw*, is unjustified.

1. The trial court properly found the racial stereotyping undertaken by the districts' architect, and adopted by the state, as an act of segregation.

The record in this case reflects the kind of racial stereotyping in districting which is subject to strict scrutiny, and presumptively unconstitutional. The conduct leading to and the adoption of the 1993 consent judgment -- far from non-racial interest group negotiation -- is just what *Shaw* found to

be so troubling. The district court found that no recorded evidence supported the alleged associational interest claimed to satisfy strict scrutiny. App. 50a.

Sinkfield argues that Reed's use of block-level racial census data to construct the districts was not a form of computerized racial stereotyping, but a political exercise that was not respected properly by the district court. This is just not true. The district court found that Reed lacked the data needed to protect political associational interests, and was forced into an "overbroad proxy of race." App. 50a. As in *Bush v. Vera*, Reed had abundant racial data at the individual census block level, but had political data only at the precinct level. *See* 517 U.S. 952, 961 (1996). When the many individual precincts were torn apart into separate legislative districts, it was the racial data which was available. Moreover, it simply is not possible for anyone to know the political views of every black citizen in these census blocks. It is more likely that Reed really just assumed that all black citizens in Alabama share the same political views. Such assumptions reflect stereotyping, not good citizenship.

Sinkfield argues that Reed knew "from years of analyzing election returns" where ADC supporters and its allies resided. *See* Sinkfield at 13. But, according to the record here, election results are known only for entire precincts, and not for the census blocks from which these invalidated districts were drawn. No amount of "analyzing election returns" could predict the voting behavior of an individual census block.

Even if the Sinkfields' claims are understood as a genuine effort to credit the associational rights of an organized political group, the Alabama Democratic Conference, they were correctly rejected, as the record will not support this form of recasting. There was no proof that the ADC, or Reed, knew in which particular census block its registered members lived, much less its "supporters."

Thus, when the court found a district to be a racial classification, it was not controlled by Reed's general purposes.

And, in the particular districts where race was not shown by the plaintiffs to predominate in specific fashion, the district court dismissed the claims. It did so noting that Reed's general purpose was insufficient to sustain a claim. The district court's comment about HD 88 typifies the weight it gave to Reed's general purpose: "Reed has openly stated that his role in this process was to represent the interests of black voters, and that his primary goal was to increase black representation in the Alabama legislature . . . General evidence about Dr. Reed's goals in drawing the state-wide districting plan as a whole is not sufficient to show that HD 88 in particular was drawn for racial reasons." App. 224a. *See also* App. 232a (HD 82); 242a (HD 73).

The district court's findings reflect a record with specific acts of racial segregation by the state, and not a generalized antagonism toward black political association.[5]

2. The First Amendment does not justify, as narrowly tailored to advance compelling state interests, racial classifications adopted by the state.

In no event has a First Amendment question warranting review been created. It is well established that no political or other group has any First Amendment right to have the state adopt its racial perspectives embodied in statutes or court orders. Sinkfield has not been wronged because a federal district court refused, in its final order, to allow the state to emit racial messages.[6]

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[5]The ADC is merely one of at least two groups organized politically on a racial basis to advance the interests of black citizens. The other group is the New South Coalition ("NSC"). The ADC and NSC do not always support the same candidates in primary elections; and, on occasions, the NSC may support candidates other than Democrats in the general election. Reed cannot claim that he was acting for an alliance of ADC, NSC, and another group known as the Jefferson County Citizens Coalition in every aspect of the redistricting.

[6]*See Smith v. Allwright*, 321 U.S. 649 (1944); *Terry v. Adams*, 345 U.S.

None of the cases affirming the right of political parties to autonomy or self-determination require that racially organized groups be able to implement their views on the racial treatment of citizens through state-ordered racial classifications. *See* Sinkfield at 25-26. There is certainly a difference between the state tolerating diverse views of private organizations about race as a matter of party autonomy, *see, e.g., California Democratic Party v. Jones*, 120 S. Ct. 2402, 2407 & n.5 (2000)(state cannot require that political parties conduct only blanket primary to choose nominees), and the state itself establishing racial classifications in its governance, its voting districts, or in the primary election process. The cases cited by Sinkfield on protecting political autonomy do not rise to the level of requiring judicial deference to the state's adoption of a political party's proposal for a racial classification.

Sinkfield wrongly says that the district court faulted "the efforts of Dr. Reed and his associates to aggregate their constituents as an 'act of segregation.'" Sinkfield at 26. Actually, the district court's use of the phrase "act of segregation" refers to the action of the state, as the following quotation shows:

> [T] he 'essence' of a Shaw claim has been that '**the State has used** race as a basis for separating voters into

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461 (1953). *See also, Hishon v. King & Spalding*, 467 U.S. 69, 78 (1984)(*citing, Norwood v. Harrison*, 413 U.S. 455, 470(1973)). Sinkfield's exaggerated tone naturally undermines his credibility. No one is suggesting to "prohibit African-Americans from associating politically to seek equity for blacks." Sinkfield at 24. No one is suggesting the ADC or other black voter organizations in Alabama must constitute themselves differently. *Id.* at 25. No one is proposing to require the ADC to register all of its members. *Id.* at 26. No one is proposing to force the group to change the race-linked political message of the organization. *Id.* Plaintiffs insist only that when a government adopts a districting plan, the result of the political advocacy of the ADC or any other interest group will fall within constitutional bounds.

> districts.' *Id.* at 911, 115 S. Ct. at 2486 (emphasis added). **The act of segregation**, not racial composition alone, inflicts the constitutional harm; when an intent to racially segregate overrides a respect for political subdivisions and geographical communities, it 'convey[s] the message that political identity is, or should be, predominantly racial.'

App. 14a. (emphasis added)(*quoting Bush v. Vera*, 517 U.S. at 980-81).

There should be no exception to these rules when the state-embraced racial classification -- the act of segregation -- is the result of "skillful politics," even by those seeking fair, equitable representation for racial groups. *See* Sinkfield at 25. "Skillful politics" could be said to justify tolerating the success of the most invidious and racially motivated associations of the segregationist era designed to attain government action. The proper degree of respect given for "skillful politics" of the racial kind that succeeds in obtaining government action is reflected in the strict scrutiny required for reviewing racial classifications. *See Bush v. Vera*, 517 U.S. at 995 (O'Connor, J., concurring)("States, playing a primary role, and the courts, in their secondary role, are capable of distinguishing the appropriate and reasonably necessary uses of race from its unjustified and excessive uses."). Thankfully, Bennett does not offer the claim that Sinkfield asserts as a state interest, much less a compelling one required by strict scrutiny to withstand a *Shaw* challenge.

The district court understood the fundamental message of the *Shaw* case and its progeny and applied it correctly to a record reflecting racial stereotyping. The state's adoption of race in its actions is inherently exclusionary and requires the most stringent justification, regardless of whether the state's action was prompted by a group associated privately for racial objectives. This case does not involve discrete remedial actions undertaken in the name of remedying particularized past racial

discrimination. The district court's understanding was not "backwards," confused, or in need of reconciliation with the First Amendment.

III. The District Court Below Correctly Determined That The Plaintiffs' Claims Are Not Subject To Any Equitable Or Procedural Bar.

The procedural defenses of the Appellants warrant some brief review to assure proper identification of the plaintiff parties. The "Rice Plaintiffs" filed first in May 1997 in federal court, and they asserted claims against their particular Senate and House Districts as well as vote dilution claims against the structure of the entire plan, as well as their particular districts. App. 97a-99a; 97a-125a. Their claims were stayed pending presentation of their claims in state court, as ordered by the federal court, where the 1993 consent judgment had been entered between Sinkfield and Bennett's predecessor. App. 140a.

In October 1997, nine additional parties plaintiff, who resided in different districts from the Rice Plaintiffs, joined the federal action. App. 145a-150a; App.152a-154a. These persons were known originally as the "Thompson Plaintiffs," and they form the core group whose *Shaw* claims proceeded to trial in federal court. The Thompson Plaintiffs refused to present their claims to the state court. In November 1997, the state court rendered a judgment against the Rice Plaintiffs on the claims they presented there as part of their state court intervention. App. 156a- 179a.

Because of a pre-trial judgment in federal court against Plaintiff Thompson, the Plaintiffs who proceeded to trial in January 2000 are known as the "Kelley Plaintiffs." It is against the Kelley Plaintiffs that the procedural bars of laches, mootness, and *Rooker-Feldman* doctrine, are asserted. They are addressed in that order.

A. The district court acted within its equitable discretion in finding that injunctive relief for claims by the Kelley Plaintiffs was not barred by laches. ***(Responding to Bennett Question 2 and Sinkfield Question 4).***

"[T] he existence of Laches is a question primarily addressed to the discretion of the trial court." *Gardner v. Panama Railroad Co.*, 342 U.S. 29, 30 (1951)(per curiam). *See Lopez v. Monterey County*, 519 U.S. 9, 20 (1997). This Court normally accepts findings of lower courts "on factual considerations such as those underlying a determination of laches." *McCarthy v. Briscoe*, 429 U.S. 1317 (1976) (Powell, Circuit Justice, 1976). Given the fact-intensive nature of the inquiry, the lower court's finding should not be disturbed. Not a single member of the three-judge court found Appellants' laches argument to have merit. App. at 8a- 9a.

The burdens to plead and prove laches are upon the Defendants/Appellants. Fed. R. Civ. P. 8(c). Elements include delay in bringing the claim and prejudice to the defense of the action. The Kelley Plaintiffs did not delay inexcusably in bringing this action seeking injunctive relief against use of gerrymandered state legislative districts. As the court below reported, the *Shaw v. Reno* analysis in the redistricting arena was new and somewhat uncertain at first in its contours. The 1997 filing was in time for relief in the 1998 elections. Thereafter, delay in achieving relief was a function of the aggressive defense put up by the State Appellants and the Sinkfield class, and the federal district court's stay from December 1997 to January 1999 while the Rice proceedings continued in state courts at trial and upon appeal.

The Appellants are not prejudiced in their defense of the case by the 1997 commencement of this lawsuit. *See Shuford v. Alabama Bd. of Educ.*, 920 F. Supp. 1233, 1240 (M.D. Ala 1996) ("The defendants have not shown a reason why it would be more difficult to litigate a section 5 claim today," rather than

earlier.) The State Appellants have been aware, since May 2, 1997, that various gerrymandered districts were being challenged. The claims of the Kelley Plaintiffs, who appeared shortly thereafter, and who remain in the case, should not be deemed to prejudice the State Appellants. The State Appellants insist that the case should have been brought even earlier. But this argument strikes a very hollow chord in view of the debate about the "standing" of the Kelley Plaintiffs, already presented. The actual relief ordered, an injunction against further use of the gerrymandered districts, further lessens any potential prejudice. The district court did not order new legislative boundaries to be drawn right before the census. Thus, it cannot be said that the stability and continuity of the legislative process are infringed, as suggested by the State Appellants. For these reasons, this Court should affirm the district court's correct determination that laches is no bar to the claims presented or the relief granted.

The cases cited by Appellants are not in conflict with the district court's decision. *See* Bennett at 20, Sinkfield at 29-30. Each is factually distinct. At the time Ms. Kelley and others filed suit, only one election had been held using the offending districts, which had been in force fewer than four years. By contrast, in *White v. Daniel*, 909 F.2d 99 (4th Cir. 1990), the plaintiffs were challenging election districts that were seventeen years old. Moreover, the time of filing in the decennium – 1988 – was one year closer to the next set of elections than the filing by the Kelley Plaintiffs. The case of *Fouts v. Harris*, 88 F. Supp. 2d 1351, 1353-54 (S.D.Fla. 1999) challenged a set of south Florida congressional districts established for use in the 1992 elections, but was filed April 2, 1998. Four elections had already been held by the time of the court's decision, and a similar *Shaw* challenge to another congressional district in the same state had been filed, adjudicated, and remedied prior to the 1996 elections. *Johnson v. Mortham*, 926 F. Supp. 1461 and 926 F. Supp 1540 (N.D. Fla. 1996). *Sanders v. Dooly County*, _ F. Supp.2d __, CA No.

98-00412-CV-2-DF-5 (M.D. Ga., May 11, 2000), appeal pending No. 00-12850-H (11th Cir.) involved a post-election 1998 challenge to an October 1992 plan already used in elections and a runoff in Dec. 1992, Jan. 1993, 1994, 1996, and 1998. *Maxwell v. Foster*, Civil Action No. 98-1378 (W.D. La. Nov. 24, 1999) involved a July 1998 challenge to a plan adopted in 1991 by the Louisiana legislature, and the decision was rendered after three elections had been held using the plan. *Cf., Shuford v. Alabama Bd. of Educ.*, 920 F. Supp. 1233, 1239 (M.D. Ala 1996)(claim of failure to obtain Section 5 preclearance not "barred by the equitable doctrine of laches" although the plaintiff "waited through two election cycles before filing suit.")

B. The district court correctly determined that the claims of the Kelley Plaintiffs were not moot. *(Responding to Bennett Question 3 and first portion of Sinkfield Question 3).*

Bennett wrongly asserts that the district court was required, in resolving the claims of the Kelley Plaintiffs for an injunction against future use of their districts, to accept the Alabama Supreme Court's determination of mootness for the claims of the Rice Plaintiffs. The district court correctly found that effective relief could be granted, and therefore that the case had not become moot. Under federal law, the imminence of the census is no basis for finding that Article III power, or that its equitable discretion, has evaporated in a redistricting controversy.

The trial court reported that it did not believe that future potential legislative action would change the districts under review and thereby avoid the need for relief. Appellants offer a mere hope that a proper redistricting will be in place before the 2002 regularly scheduled elections, and an expectation that Bennett will not be faced with conducting future elections using the districts ordered by the 1993 consent judgment. One

very clear fact supports the district court: "Alabama's long history of refusing to redistrict in a timely fashion makes it possible to provide the plaintiffs meaningful relief . . . ." App. 12a n.8. *See also, Burton v. Hobbie*, 561 F. Supp. 1029, 1032-34 (M.D. Ala. 1983)(3-judge court)(ordering special elections following legislative correction of defects in previous legislative plan).

Under the law governing mootness, the expectation of a potential change in the Defendants' action is insufficient to establish mootness. *See Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 120 S.Ct. 693, 708 (2000). It must be "absolutely clear" that the challenged conduct will not recur. *Id. See also, United States v. Concentrated Phosphate Export Assn, Inc.* 393 U.S. 199, 203 (1968)).

Bennett has come nowhere close to meeting this standard, and nothing in the record requires a conclusion that the trial court was incorrect. There is not even a back-up alternative districting plan to be used in place of the challenged plan or in the event a change in population reflected in the 2000 census figures makes it too difficult for the legislature to agree on a redesign of the districts so as to eliminate the race-based districts. *See Hunt v. Cromartie*, 119 S.Ct. 1545, 1548 n.1 (1999); *Whitcomb v. Chavis*, 403 U.S. 124, 140-41 (1971).

Bennett's status as a party to the state court decree presents another complicating factor in the effort to prove mootness. *See* App. 156a to 179a. Even if a new plan is passed by the legislature, it must obtain the blessing of the state court, which issued the 1993 consent judgment. That court continues to retain jurisdiction over Bennett.

Moreover, the district court correctly declined to follow the mootness determination of the Alabama Supreme Court. As the district court reports, it was not presented with any evidentiary indication that the precise relief sought by the Kelley Plaintiffs, including holding special elections in any invalidated districts, was also sought in the Alabama Supreme Court.

Regardless of whether the Alabama Supreme Court was presented with a request for the same relief as the district court ultimately ordered, the district court had an obligation to determine for itself the mootness issue. *See Liner v. Jafco, Inc.*, 375 U.S. 301, 304 (1964).

Bennett's assertion that the Alabama Supreme Court's decision reflected a universal understanding of mootness doctrine is incorrect. *See* Bennett at 23. Even though federal cases were cited in a footnote by way of example, the Alabama Supreme Court applied a different standard from what is applied in the federal system. In the state court, in districting matters, the decision maker "must assume that the Legislature will timely fulfill its constitutional duty to redraw legislative districts based on [the 2000] census." App. 198a. As noted above, the federal courts are instructed to assume that challenged conduct will recur and to make findings if the assumption is incorrect.[7]

Finally, even if this Court were to assume that Bennett would not use these districts again in the future, the collateral consequences, and the continuing effects of their past usage prevent dismissal on mootness grounds. *See, e.g., Reno v. Bossier Parish School Bd.*, 120 S.Ct. 866, 871 (2000)(past districts remain as benchmark for retrogression analysis under Section 5 of the Voting Rights Act.). The districts used previously by Bennett in the past also inevitably will be invoked as a pattern for future districts, unless invalidated. They "serve as the starting point for the next reapportionment," for evaluating future plans in light of traditional districting principles such as deference due to protection of incumbents, or

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[7] This difference in perspective on the justiciability of claims is not unusual. Alabama courts did not find one person-one vote claims to be justiciable until the consent judgment related to this case was entered in 1993. *See Brooks v. Hobbie*, 631 So. 2d 883 (Ala. 1993), *overruling, Waid v. Pool*, 255 Ala. 441, 51 So. 2d 869 (1951). By contrast, federal courts have found such claims justiciable since 1962. *See Baker v. Carr*, 369 U.S. 186 (1962).

simply in identifying core areas for any future plan. App. at 12a.

For these reasons, the claims made by the Kelley Plaintiffs are not moot.

1. The Appellants' invocation of the *Rooker-Feldman* doctrine is mistaken.

The Appellants seek an extraordinary application of the *Rooker-Feldman* doctrine as a basis for review of the district court decision. *See* Bennett at 24; Sinkfield at 28. The state court decision which allegedly should have been reviewed by this Court is one controlled by state law. The state court decision was based on mootness, a state procedural issue reflective of the justiciability of the claims. *See supra* at n.9. *See also, Baker v. Carr*, 369 U.S. 186, 235-36 (1962). Under such circumstances, 28 U.S.C. § 1257 provided no basis for review here, or for barring original federal district court jurisdiction of claims or defenses said to be already addressed.

The Appellants seem to suggest that the bar should apply because the Rice Plaintiffs faced the same argument in state court that the Kelley Plaintiffs face in federal court. *See* Bennett at 25; Sinkfield at 28-29. But none of the persons in federal court is a party to the state court proceedings. Under such circumstances, a conventional understanding of appellate review, and application of *Rooker-Feldman* doctrine, plainly means that the district court did not sit as an appellate court in review of a state court decision. None of the Appellees here had the right to seek an appeal of the state court proceedings.

In *Johnson v. DeGrandy*, 512 U.S. 997 (1994), this Court refused to apply the *Rooker-Feldman* doctrine to find that previous redistricting proceedings before the Florida courts prevented the federal district court from hearing the claims of a non-party against the same districting plan. *See* 512 U.S. at 1005-06. The Kelley Plaintiffs similarly sought to have their *Shaw* claims litigated for the first time in the federal district

court, and the district court did not review any *Shaw* ruling of the state court in the *Rice* proceedings.

In addition to the fact that the Kelley Plaintiffs were not parties to the state court proceedings, none of the *Shaw* claims adjudicated by the district court was the subject of a *Shaw* claim in the *Rice* state court proceedings. The *Shaw* claims adjudicated by the district court are directed at, and result in relief against, several discrete legislative districts established by agreement of Bennett and Sinkfield, without the usual adverseness of a judicial proceeding. App. at 215a-216a. A careful review of the Appellants' filings shows that they do not assert a contrary position. Rather, the Appellants assert that these *Shaw* issues asserted against particular districts adopted between Bennett and Sinkfield should have been raised in the state court. In view of the strict requirements for standing to raise *Shaw* claims, their position is untenable.

Alternatively, Bennett claims that the Kelley Plaintiffs were required to intervene in the state court proceedings undertaken by the Rice Plaintiffs. According to Appellants, failing intervention by the Kelley Plaintiffs, their issues should be deemed to have been waived under the *Rooker-Feldman* doctrine. *See* Bennett at 25 (discussing opportunity to intervene in state court proceedings).

No case has ever adopted such a radical view of how to understand the district court's original jurisdiction, or how to construe the manner in which § 1257 limits the original jurisdiction of the district court. The *Feldman* case itself holds that the district court had jurisdiction to hear Feldman's general challenge "to assess the validity of a rule promulgated in a non-judicial proceeding," even though the same court lacked jurisdiction over his claims about his particular situation. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 485 (1983) (finding claims against rule not "inextricably intertwined" with particular claims against denial of admission to bar).[8]

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[8] Bennett attempts to equate the determination that privity exists, for *res*

Finally, to bar district court jurisdiction because, as Bennett maintains, "[t] he same attorney orchestrated all the claims," of both the Rice Plaintiffs and the Kelley Plaintiffs would be improper. *See* Bennett at 26. This Court has not accepted the proposition that mere representation by a common counsel and the assertion of a similar legal claim is sufficient to trigger claim preclusion against a non-party. *See, e.g., South Central Bell Telephone Co. v. Alabama*, 526 U.S. 160, 167 (1999). Similarly, the presence of the same counsel should be no justification for finding the jurisdiction of the district court blocked by the *Rooker-Feldman* doctrine.

2. The district court correctly determined that the Kelley Plaintiffs are not precluded by the determination of the issues raised by the Rice Plaintiffs in their state court proceedings. *(Responding to second portion of Sinkfield Question 3).*

Sinkfield also attacks the trial court for allegedly showing a "blatant disrespect for federalism" and ignoring "full faith and credit" by allegedly sanctioning multiple separate lawsuits for *Shaw* claims against other districts. Despite his high-pitched rhetoric, Sinkfield never points to any particular district claims or issues that were heard improperly, or were adjudicated in a manner that conflicts with a state court judgment.

Shaw claims are particularized to the district in which a plaintiff resides or from which he is personally excluded. The

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judicata purposes, between the Rice Plaintiffs and the Kelley Plaintiffs, as to certain claims, to bar the Kelley Plaintiffs for an alleged failure to intervene in the *Rice* state court proceedings to adjudicate *Shaw* claims for their own individual districts. *See* Bennett at 24-25. In November 1997, after the state court ruled against the Rice Plaintiffs, Bennett himself advised the federal trial court that the state court lacked authority to adjudicate the *Shaw* claims of the Kelley Plaintiffs, who were not parties, and that the federal court had a duty to hear their claims. App. 24b.

district court was correct when it unanimously ruled on July 2, 1999:

> [T] he state court expressly limited the Rice plaintiffs' gerrymandering claim to the districts in which the Rice plaintiffs reside: House Districts 79 and 83 and Senate Districts 27 and 28. The other Thompson plaintiffs live in districts outside of those addressed by the state court, and their gerrymandering claims could not have been asserted by the Rice plaintiffs for lack of standing.

App. at 215a-216a. That the district court below carefully sifted through other claims, and determined that certain others were barred, supports the conclusion that the *Shaw* claims of the Kelley plaintiffs were properly before the district court.

Sinkfield asserts that the Thompson/Kelley Plaintiffs "sought to represent a class identical to the class the Rices had sought to represent in their pleadings." Sinkfield at 27. The class claims the Rice and Kelley plaintiffs originally sought to assert challenged a stark pattern of under populating majority black districts and overpopulating majority white districts, and a claim that the districts had a deviation slightly greater than the often-accepted 10% level. The Kelley Plaintiffs' claims of this sort thus were not entertained by the federal district court below. It is clear that no plaintiff class was ever certified in the 1997 *Rice* state court case. Thus, even though they may have pled, in part, the same global claims, that does not bar the *Shaw* claims adjudicated in individual district specific fashion by the trial court.

There is nothing in the case of *Growe v. Emison*, 507 U.S. 25, 36 (1993) which requires that preclusion law apply to bar the Kelley Plaintiffs' *Shaw* claims. In fact, *Growe* allows a federal suit subsequent to state proceedings, does not require federal plaintiff to intervene in the state proceedings, as the

Rice Plaintiffs were directed to do here, and in some cases requires that state court findings be disregarded. *Id.* at 35-39.

The deference shown by the federal court is typical of the practical operation of the comity shown by judges in resolving election districting disputes. There has been no question about which system is supreme, and no successful (or confusing) effort to force federal courts to accept the factual findings of the states courts involving disputes between persons who were not parties.[9] The problem envisioned by Sinkfield is really one of his own making, in this case, and is not sufficiently substantial to warrant review.

C. Alabama's system of government erects no bar to adjudication of *Shaw* liability or to the remedy imposed by the district court, at this point in the decade. *(Responding to Bennett Question 4).*

Bennett also asserts that the district court should be reversed because it "did not find a remedy that is workable within the confines of Alabama's system of government," and therefore was without a case or controversy that would justify the exercise of judicial power, or the finding of liability in a *Shaw* redistricting case. *See* Bennett at 26-27. This challenge to the district court's opinion relies on vote dilution cases in which courts were asked to transform an electoral system from at-large to single member districts for the sake of remedying the allegedly dilutive effects on racial minority groups.

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[9] *See, e.g., Ex parte Collins*, 717 So.2d 998 (Ala. 1998)(directing vacation of racially gerrymandered consent decree for school board districts); *Wesch v. Folsom*, 6 F. 3d 1465 (11th Cir. 1993), *cert. denied*, 510 U.S. 1046 (1994)(enjoining same Sinkfield parties from attempting to circumvent federal court Congressional district plan with state court action); *Brooks v. Hobbie*, 631 So.2d 883 (Ala. 1993)(welcoming certified question from federal court in State legislative redistricting). *See also*, J.P. Lisenby, *Racial Politics Alive and Well In Alabama: The Impact of Recent Voting Rights Decisions On Alabama's Electoral Districts*, 46 Ala. L. Rev. 641 (1995).

These cases do not support Bennett's argument. No case has ever found that the state's professed intention to change at-large elections to single member districts at a point in the future made remedial action not "workable within the confines of [the State's] system of government." Thus, in *Whitcomb v. Chavis*, 403 U.S. 124, 140 (1971), even the issuance of new census data, after the district court's decision, did not avoid the need to address the validity of the at-large electoral structure being challenged.

Holder v. Hall, 512 U.S. 874 (1994), turns on the difficulty that a federal court faces in choosing a standard by which to measure whether a racial minority group is impacted by an electoral structure so as to dilute its group voting strength, under Section 2 of the Voting Rights Act. 42 U.S. C. § 1973. *Holder* nowhere even suggests that the need for redistricting, in light of impending decennial census results, destroys the court's ability to design relief, or find liability. Thus, the reluctance to find liability arising from the inability to identify a standard for liability, identified in *Holder v. Hall*, has no application here.

The inconsistency of Bennett's criticism, in this section, of the district court's remedy also evidences the lack of support for his argument. On the one hand, Bennett insists that the injunction against using the gerrymandered districts is both unduly "intrusive," and, on the other hand, that the injunction imposes "no substantive relief." *See* Bennett at 28. Bennett does not claim that the injunction is destructive of the process of electing representatives, in a manner analogous to the effort at judicial subdistricting found harmful to judicial administration by the Eleventh Circuit in *Nipper v. Smith*, 39 F. 3d 1434 (11th Cir. 1994)(en banc), *cert. denied,* 514 U.S. 1083 (1995).

None of Bennett's criticism refers to a single *Shaw* case which declines to issue relief for the reasons invoked here. The district court's injunction against any future use of the districts found to be racially gerrymandered is a properly circumscribed

form of relief. It provides the State the traditional opportunity, in the first instance, to design any replacement districts that are needed in the future.

At bottom, Bennett is attempting to transform the equitable restraint shown by the district court, in not ordering him to conduct special elections, against it. Bennett merely seeks to have this Court second-guess the trial court's discretion to issue relief, and has dressed up his claim, without any basis, to assert that the relief issued was not "workable."

CONCLUSION

The trial court properly evaluated the direct and circumstantial evidence, and correctly applied the settled law of standing and equal protection and other doctrines as directed by this Court. Neither Bennett nor Sinkfield has raised any issues that warrant further review or that would justify reversal. Accordingly, the Court should grant Appellee's Motion for summary affirmance of the judgment below, or in the alternative dismiss the appeal.

Respectfully submitted,

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APPENDIX

ALL PRECINCT SPLITS FOR SELECTED ALABAMA HOUSE DISTRICTS (63, 73, 75, 86 AND 89)

County	Precinct Name	House District	% White	% Black	Total Pop	Total White	Total Black	Other
Dale	Rocky Road #7	85	73.5%	19.7%	6344	4661	1251	432
		89	98.6%	1.0%	518	511	5	2
		93	67.6%	32.4%	34	23	11	0
	Echo 9	89	98.9%	0.3%	1045	1033	3	9
		85	100.0%	0.0%	234	234	0	0
	Ewell 14	89	95.9%	3.2%	1132	1086	36	10
		85	40.3%	58.6%	486	196	285	5
		93	89.8%	6.6%	381	342	25	14
	Ozark 1	89	95.4%	4.1%	1693	1615	69	9
		85	63.3%	34.8%	8322	5267	2893	162
		93	86.9%	10.9%	4704	4086	513	105
	Marley Mill 15	89	94.0%	4.5%	1525	1434	69	22
		85	52.3%	46.9%	386	202	181	3

County	Precinct Name	House District	% White	% Black	Total Pop	Total White	Total Black	Other
Elmore	Grandview Pines	75	83.4%	15.7%	3618	3016	569	33
	(City Hall)	88	83.6%	15.5%	1119	935	173	11
	Millbrook	75	78.0%	21.3%	4468	3487	952	29
	Memorial Ctr.	88	83.4%	15.6%	1260	1051	197	12
	Redland Fire	75	95.6%	3.5%	1056	1010	37	9
	Station	31	68.0%	31.6%	1284	873	406	5
	Fain Comm. Ctr.	75	40.1%	59.9%	1467	589	878	0
		31	100.0%	0.0%	2	2	0	0
	Nat'l Guard	75	94.9%	5.1%	79	75	4	0
	Armory	31	78.7%	19.9%	1780	1401	355	24
Houston	Max Snell Farm	86	95.2%	0.0%	355	338	0	17
	Equip.	87	85.8%	13.3%	1129	969	150	10
		93	88.4%	11.0%	155	137	17	1
	Doug Tew	86	90.4%	8.1%	5933	5365	480	88
	Center	87	89.1%	8.9%	1374	1224	122	28
		93	90.2%	8.1%	6776	6115	552	109

County	Precinct Name	House District	% White	% Black	Total Pop	Total White	Total Black	Other
Houston (Continued)	Westgate Park	86	98.5%	0.9%	788	776	7	5
		87	95.1%	2.9%	5420	5155	156	109
		93	95.4%	3.3%	1534	1463	50	21
	Taylor City Hall	86	97.6%	2.4%	254	248	6	0
		87	97.4%	1.9%	1484	1446	28	10
	Rehobeth Vol. Fire Dept.	86	96.4%	3.1%	752	725	23	4
		87	97.5%	1.8%	1278	1246	23	9
	Kinsey City Hall	86	94.9%	5.1%	158	150	8	0
		85	72.1%	27.9%	1528	1101	426	1
	Johnson Homes	86	87.8%	12.2%	164	144	20	0
		85	6.8%	93.0%	6046	411	5621	14
	NG Armory - 3d Ave.	86	79.6%	19.0%	9251	7362	1758	131
		85	100.0%	0.0%	13	13	0	0
	Lincoln Center	85	0.9%	99.1%	1103	10	1093	0
		86	96.3%	3.7%	218	210	8	0

County	Precinct Name	House District	% White	% Black	Total Pop	Total White	Total Black	Other
Montgomery	Cloverdale	73	95.2%	4.2%	5598	5327	236	35
	Comm. Ctr.	77	83.4%	16.0%	1579	1317	253	9
	J. Patterson	73	69.1%	29.1%	1114	770	324	20
	Tech. Sch.	76	42.7%	56.1%	6666	2844	3742	80
	Seth Johnson	73	73.4%	24.6%	6097	4477	1500	120
	Elem. Sch.	76	100.0%	0.0%	12	12	0	0
	G. Washington	75	87.3%	10.6%	710	620	75	15
	Jr. High Sch.	76	22.2%	77.0%	3232	719	2489	24
	Normandale	73	84.8%	14.6%	4592	3893	671	28
	Library	76	39.3%	59.8%	731	287	437	7
		77	29.3%	70.6%	1526	447	1077	2
	Pinedale	75	71.5%	27.4%	3615	2583	991	41
	Comm. Ctr.	76	42.3%	57.3%	4598	1943	2634	21
	Aldersgate U.	73	84.0%	14.2%	4115	3458	584	73
	Meth.	75	92.6%	5.2%	2457	2275	127	55

County	Precinct Name	House District	% White	% Black	Total Pop	Total White	Total Black	Other
Tuscaloosa	Regional Educ.	70	28.7%	71.3%	1938	556	1381	1
	Ctr.	63	81.9%	16.7%	210	172	35	3
	Army Reserve	70	28.1%	71.3%	6295	1772	4486	37
	Ctr.	63	89.8%	9.2%	2726	2447	250	29
	Bama Mall	70	40.6%	58.9%	5548	2255	3267	26
		63	85.2%	13.0%	3805	3240	493	72
		62	85.9%	12.2%	361	310	44	7
	County	70	90.7%	6.5%	1625	1474	106	45
	Courthouse	63	80.0%	12.4%	3944	3156	488	300
	Clara Verna	70	75.4%	21.7%	5822	4388	1262	172
	Towers	63	74.6%	25.2%	389	290	98	1
	Coliseum	70	88.6%	8.5%	1040	921	88	31
		63	77.0%	19.7%	3222	2481	634	107
	Jaycee Park	70	70.6%	27.9%	1137	803	317	17
		63	70.6%	28.3%	5200	3672	1472	56

County	Precinct Name	House District	% White	% Black	Total Pop	Total White	Total Black	Other
Tuscaloosa (Continued)	McFarland Mall	62	80.4%	18.0%	12056	9687	2174	195
		63	95.9%	2.2%	715	686	16	13
		70	22.8%	77.0%	696	159	536	1
	Holt Armory	70	38.7%	61.3%	775	300	475	0
		63	66.9%	32.7%	4103	2745	1343	15
	Old Hope School S	14	99.1%	0.7%	861	853	6	2
		63	97.9%	0.9%	583	571	5	7
	N'port Armory,	63	86.0%	6.2%	924	795	57	72
	City Hall	61	85.6%	13.3%	8740	7478	1164	98
	#6 Fire Station	63	93.7%	5.4%	3641	3412	197	32
		62	77.5%	22.4%	1238	959	277	2

ALL PRECINCT SPLITS FOR SELECTED ALABAMA SENATE DISTRICTS
(21, 25, 29, 30 and 34)

County	Precinct Name	Sen. Dist	% White	% Black	Total Pop	Total White	Total Black	Other
Dale	Rocky Road #7	29	73.5%	19.7%	6344	4661	1251	432
		30	98.6%	1.0%	518	511	5	2
		31	67.6%	32.4%	34	23	11	0
	Daleville #3	29	71.7%	23.6%	3827	2745	902	180
		31	82.9%	9.8%	3704	3070	364	270
	Echo 9	30	98.9%	0.3%	1045	1033	3	9
		29	100.0%	0.0%	234	234	0	0
	Ewell 14	30	95.9%	3.2%	1132	1086	36	10
		29	40.3%	58.6%	486	196	285	5
		31	89.8%	6.6%	381	342	25	14
	Ozark 1	30	95.4%	4.1%	1693	1615	69	9
		29	63.3%	34.8%	8322	5267	2893	162
		31	86.9%	10.9%	4704	4086	513	105

County	Precinct Name	Sen. Dist	% White	% Black	Total Pop	Total White	Total Black	Other
Dale (Continued)	Marley Mill 15	30	94.0%	4.5%	1525	1434	69	22
		29	52.3%	46.9%	386	202	181	3
	Level Plains 16	31	85.1%	11.4%	3204	2727	365	112
		29	43.3%	54.8%	425	184	233	8
	Pinckard 6	29	100.0%	0.0%	2	2	0	0
		31	90.7%	9.0%	1686	1530	152	4
Elmore	Grandview Pines	25	83.4%	15.7%	3618	3016	569	33
	(City Hall)	30	83.6%	15.5%	1119	935	173	11
	Millbrook	25	78.0%	21.3%	4468	3487	952	29
	Memorial Ctr.	30	83.4%	15.6%	1260	1051	197	12
	Redland Fire	5	68.0%	31.6%	1284	873	406	5
	Station	11	95.6%	3.5%	1056	1010	37	9
	Fain Comm.	11	100.0%	0.0%	2	2	0	0
	Ctr.	25	40.1%	59.9%	1467	589	878	0
	National Guard	11	78.7%	19.9%	1780	1401	355	24
	Armory	25	94.9%	5.1%	79	75	4	0

County	Precinct Name	Sen. Dist	% White	% Black	Total Pop	Total White	Total Black	Other
Hale	Moundville 12	24	36.4%	63.6%	107	39	68	0
		21	71.5%	28.2%	2354	1684	663	7
Henry	Nat'l Guard	28	87.7%	11.2%	1685	1478	188	19
	Armory #10	29	33.4%	66.5%	2151	719	1430	2
	Capps A, Espy	28	58.0%	41.2%	398	231	164	3
	Farms B	29	46.4%	53.4%	468	217	250	1
	Edwin	28	66.4%	33.6%	295	196	99	0
	Comm. #14	29	9.5%	90.5%	211	20	191	0
	Headland Nat'l	28	90.3%	9.5%	2846	2571	269	6
	Guard #1	29	28.8%	70.8%	1207	348	855	4
	Blankenship #8	28	95.5%	4.5%	44	42	2	0
		29	81.6%	18.4%	136	111	25	0
Houston	Max Snell Farm	31	88.4%	11.0%	155	137	17	1
	Equip.	29	88.1%	10.1%	1484	1307	150	27

County	Precinct Name	Sen. Dist	% White	% Black	Total Pop	Total White	Total Black	Other
Houston (Continued)	Doug Tew	31	90.2%	8.1%	6776	6115	552	109
	Center	29	90.2%	8.2%	7307	6589	602	116
	Houston Love	31	84.5%	14.3%	4537	3836	650	51
	Library	29	15.7%	83.7%	3647	574	3054	19
	Westgate Park	31	95.4%	3.3%	1534	1463	50	21
		29	95.5%	2.6%	6208	5931	163	114
Lowndes	National Guard	30	88.6%	11.4%	316	280	36	0
		23	53.4%	46.6%	251	134	117	0
	Sandy Ridge	30	83.9%	16.1%	372	312	60	0
		23	38.3%	60.8%	600	230	365	5
	General Electric	30	94.8%	5.2%	134	127	7	0
		23	78.1%	20.4%	137	107	28	2
	Cannon Hill	30	60.9%	39.1%	345	210	135	0
		23	40.2%	59.3%	701	282	416	3

County	Precinct Name	Sen. Dist	% White	% Black	Total Pop	Total White	Total Black	Other
Mobile	Augusta Evans	34	80.6%	18.4%	2374	1914	438	22
	School	33	42.8%	57.0%	790	338	450	2
	Murphy H.S.	34	96.0%	3.9%	519	498	20	1
	Library	33	94.2%	4.7%	1701	1602	80	19
	Westlawn School	34	86.4%	12.7%	3608	3116	460	32
		33	21.7%	77.8%	1283	279	998	6
	Holloway School	34	90.5%	9.1%	231	209	21	1
		33	1.3%	98.4%	8967	117	8828	22
	St. John	34	92.3%	6.6%	3664	3382	242	40
	Methodist	33	85.2%	12.7%	2441	2079	311	51
	Hillsdale School	34	79.8%	16.2%	4942	3944	801	197
		33	17.1%	81.7%	1282	219	1047	16
	Havenswood	34	99.3%	0.6%	1142	1134	7	1
	Baptist Church	33	98.9%	0.0%	378	374	0	4
	Lott Road Florist	34	98.5%	0.7%	669	659	5	5
		33	91.6%	7.8%	2623	2403	205	15

County	Precinct Name	Sen. Dist	% White	% Black	Total Pop	Total White	Total Black	Other
Mobile (Continued)	Pleasant View	33	25.5%	74.3%	1253	320	931	2
	Bapt.	34	98.0%	0.9%	6376	6247	56	73
	Montgomery	33	97.4%	1.3%	838	816	11	11
	School	34	98.4%	0.6%	9940	9784	56	100
	Rickarby Park	34	98.0%	2.0%	152	149	3	0
		35	36.7%	62.8%	5773	2116	3626	31
	Pleasant Valley	34	87.0%	11.1%	2742	2386	305	51
	Meth.	35	76.3%	23.3%	506	386	118	2
	Edwards Fire	34	94.7%	0.0%	75	71	0	4
	Station	35	89.8%	9.3%	6007	5395	556	56
	Morningside	34	75.0%	22.9%	48	36	11	1
	School	35	81.5%	17.4%	7369	6008	1283	78
	Greystone	34	93.2%	5.5%	4456	4155	247	54
	Christian Sch.	35	84.6%	15.0%	507	429	76	2
	Woodridge	34	95.9%	3.2%	5706	5472	183	51
	Baptist Church	35	97.8%	0.9%	2178	2129	20	29
	Dees Pecan Co.	34	92.7%	6.1%	245	227	15	3
		35	82.5%	16.6%	1556	1284	259	13

County	Precinct Name	Sen. Dist	% White	% Black	Total Pop	Total White	Total Black	Other
Mobile (Continued)	Meadowlake	34	62.7%	36.3%	1340	840	487	13
	School	35	96.1%	2.7%	5942	5711	162	69
Montgomery	Cloverdale	25	95.2%	4.2%	5598	5327	236	35
	Comm. Ctr.	26	83.4%	16.0%	1579	1317	253	9
	J. Patterson	25	69.1%	29.1%	1114	770	324	20
	Tech. Sch.	26	42.7%	56.1%	6666	2844	3742	80
	Capitol Heights	25	85.9%	11.9%	6202	5327	737	138
	Comm. Ctr.	26	30.9%	68.9%	810	250	558	2
	Highland Gardens	25	94.7%	2.9%	2911	2757	83	71
	Comm. Ctr.	26	90.2%	9.2%	2426	2188	222	16
	Lagoon Park Fire	25	94.4%	4.4%	5833	5505	259	69
	Station	26	80.0%	13.8%	1348	1079	186	83
	North Montg.	25	85.2%	12.7%	2041	1739	259	43
	Comm. Ctr.	26	11.1%	88.6%	3841	426	3405	10
	Seth Johnson	25	73.4%	24.6%	6097	4477	1500	120
	Elem. Sch.	26	100.0%	0.0%	12	12	0	0

County	Precinct Name	Sen. Dist	% White	% Black	Total Pop	Total White	Total Black	Other
Montgomery (Continued)	G. Washington	25	87.3%	10.6%	710	620	75	15
	Jr. High Sch.	26	22.2%	77.0%	3232	719	2489	24
	Normandale	25	84.8%	14.6%	4592	3893	671	28
	Library	26	32.5%	67.1%	2257	734	1514	9
	Pinedale Comm.	25	71.5%	27.4%	3615	2583	991	41
	Ctr.	26	42.2%	57.3%	4597	1942	2634	21
Pickens	Reform	21	62.2%	37.7%	2133	1327	805	1
		6	100.0%	0.0%	96	96	0	0
Tuscaloosa	Big Sandy	24	23.2%	76.8%	371	86	285	0
	Baptist Church	21	75.7%	24.1%	1931	1461	466	4
	Myrtlewood	24	49.3%	50.3%	1030	508	518	4
	Sch. Comm. Ctr.	21	87.1%	11.8%	788	686	93	9
	Regional Educ.	24	28.7%	71.3%	1938	556	1381	1
	Ctr.	21	81.9%	16.7%	210	172	35	3

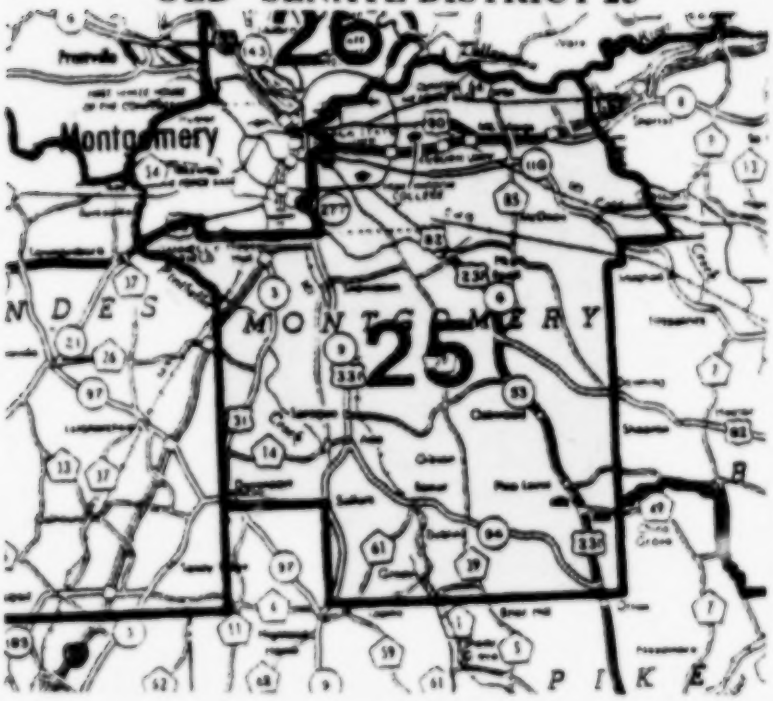
County	Precinct Name	Sen. Dist	% White	% Black	Total Pop	Total White	Total Black	Other
Tuscaloosa (Continued)	Army Reserve	24	28.1%	71.3%	6295	1772	4486	37
	Ctr.	21	89.8%	9.2%	2726	2447	250	29
	Bama Mall	24	40.6%	58.9%	5548	2255	3267	26
		21	85.2%	12.9%	4166	3550	537	79
	County	24	90.7%	6.5%	1625	1474	106	45
	Courthouse	21	80.0%	12.4%	3944	3156	488	300
	Clara Verna	24	75.4%	21.7%	5822	4388	1262	172
	Towers	21	74.6%	25.2%	389	290	98	1
	Coliseum	24	88.6%	8.5%	1040	921	88	31
		21	77.0%	19.7%	3222	2481	634	107
	Jaycee Park	24	70.6%	27.9%	1137	803	317	17
		21	70.6%	28.3%	5200	3672	1472	56
	McFarland Mall	24	22.8%	77.0%	696	159	536	1
		21	81.2%	17.1%	12771	10373	2190	208
	Holt Armory	24	38.7%	61.3%	775	300	475	0
		21	66.9%	32.7%	4103	2745	1343	15

County	Precinct Name	Sen. Dist	% White	% Black	Total Pop	Total White	Total Black	Other
Tuscaloosa (Continued)	BF Goodrich	24	52.1%	47.7%	932	486	445	1
	Union Hall	21	80.0%	20.0%	40	32	8	0
	Hillcrest High	24	62.3%	37.7%	308	192	116	0
		21	85.4%	14.0%	2968	2535	415	18
	Mount Olive	5	97.7%	0.0%	215	210	0	5
	Fire Station	21	99.3%	0.0%	2099	2084	0	15
	Macedonia	5	99.1%	0.5%	2831	2806	14	11
	Methodist	21	84.9%	14.4%	994	844	143	7
	Chapel Hill	5	96.2%	3.5%	1941	1867	68	6
	Baptist	21	21.9%	78.1%	32	7	25	0
	Old Hope	5	99.1%	0.7%	861	853	6	2
	School Site	21	97.9%	0.9%	583	571	5	7
	Buhl School/	21	95.3%	3.4%	2830	2696	96	38
	Westwood Sch.	24	43.8%	55.3%	436	191	241	4

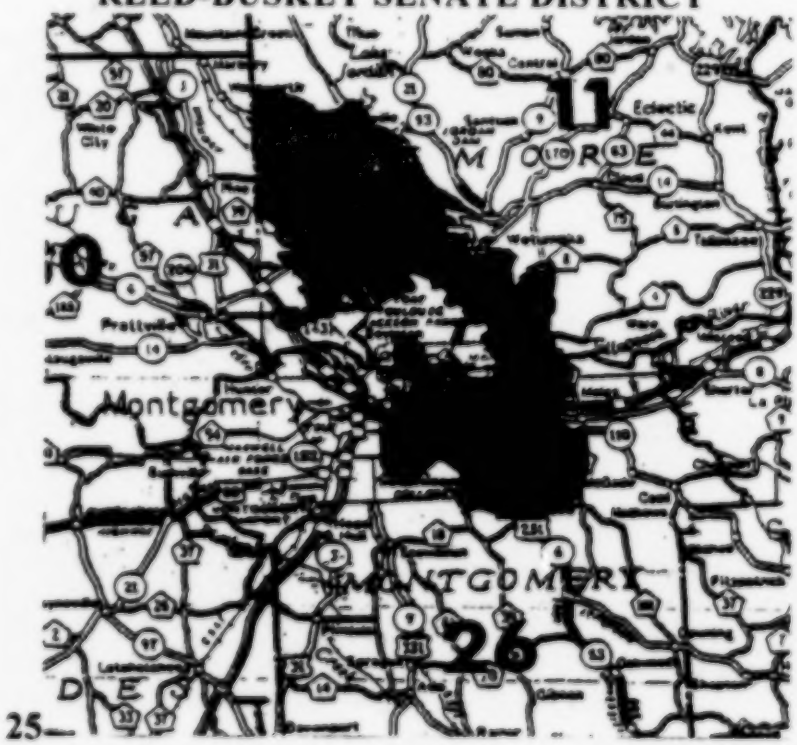
"OLD" SENATE DISTRICT 21

REED-BUSKEY SENATE DISTRICT 21

"OLD" SENATE DISTRICT 25



REED-BUSKEY SENATE DISTRICT



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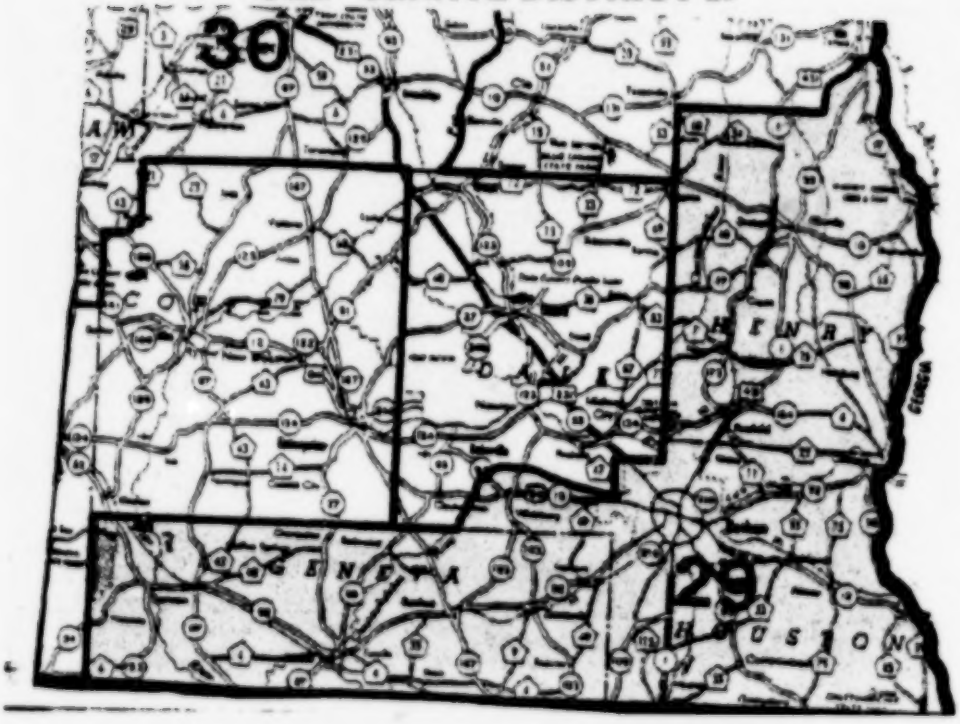
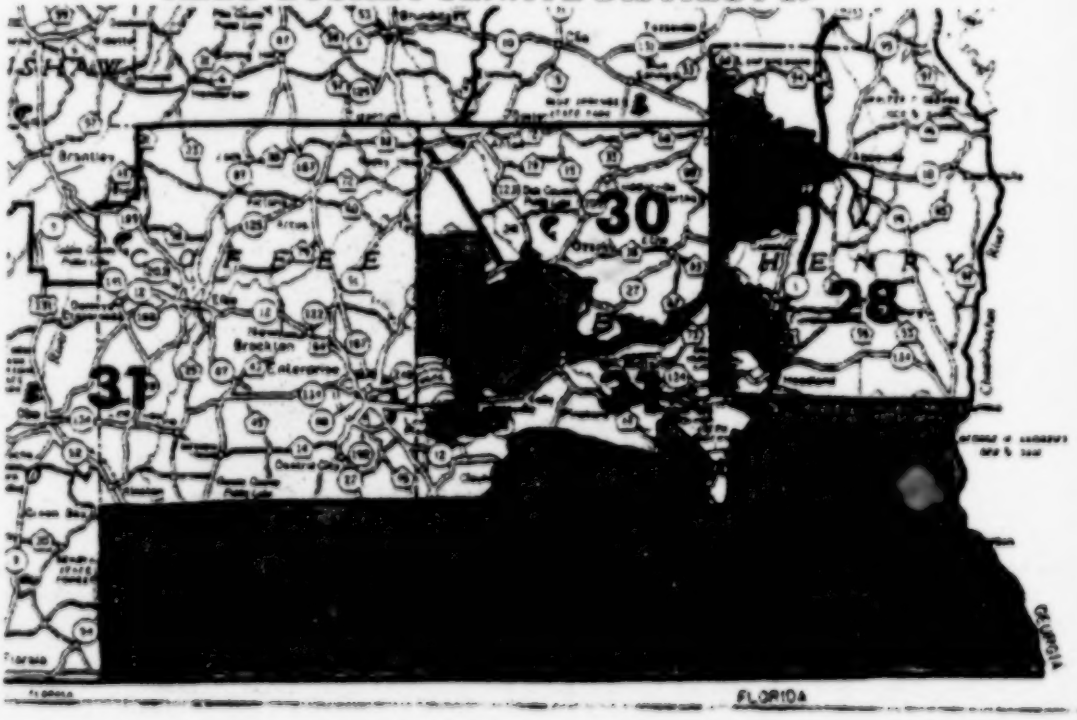


REED-BUSKEY SENATE DISTRICT 29



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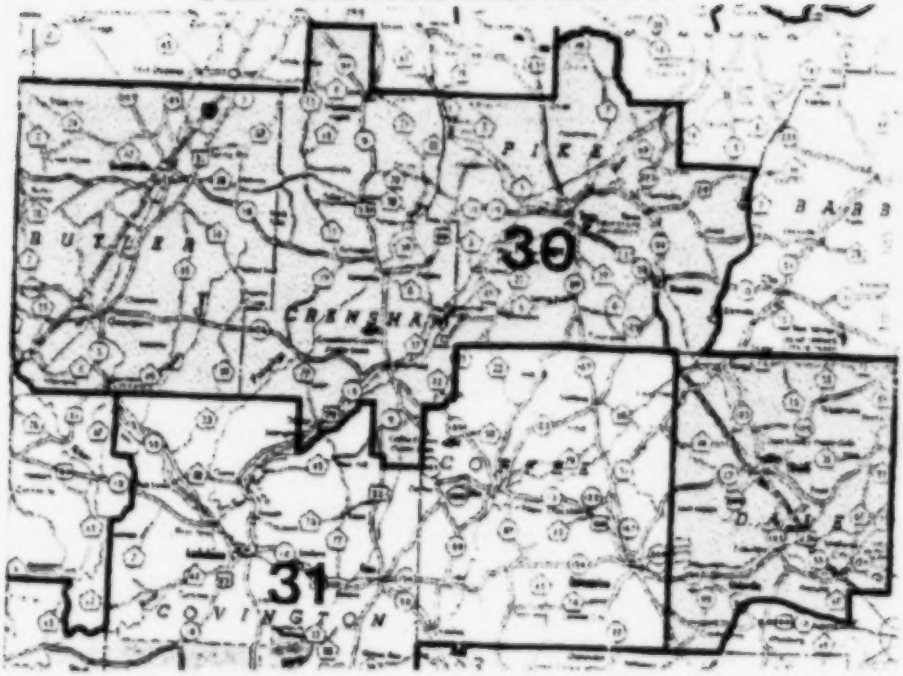

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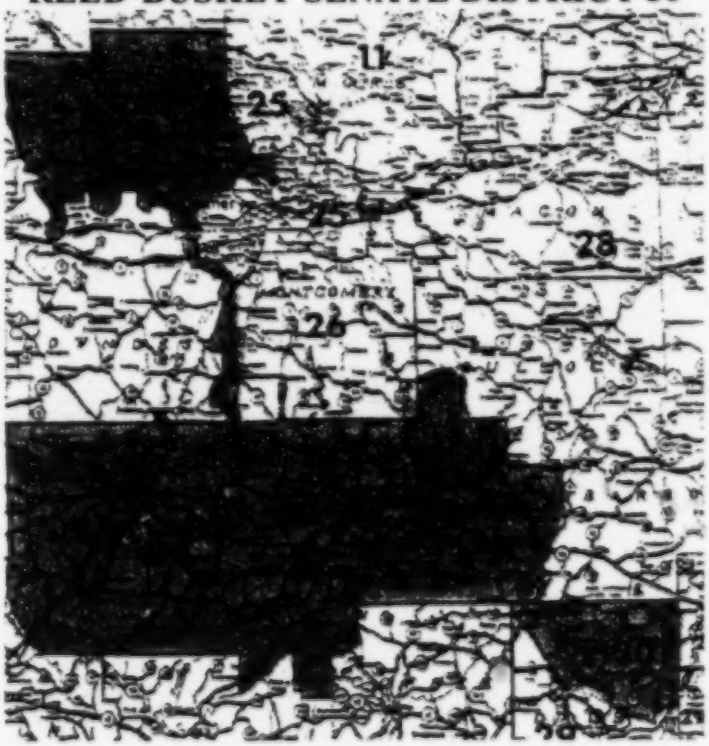
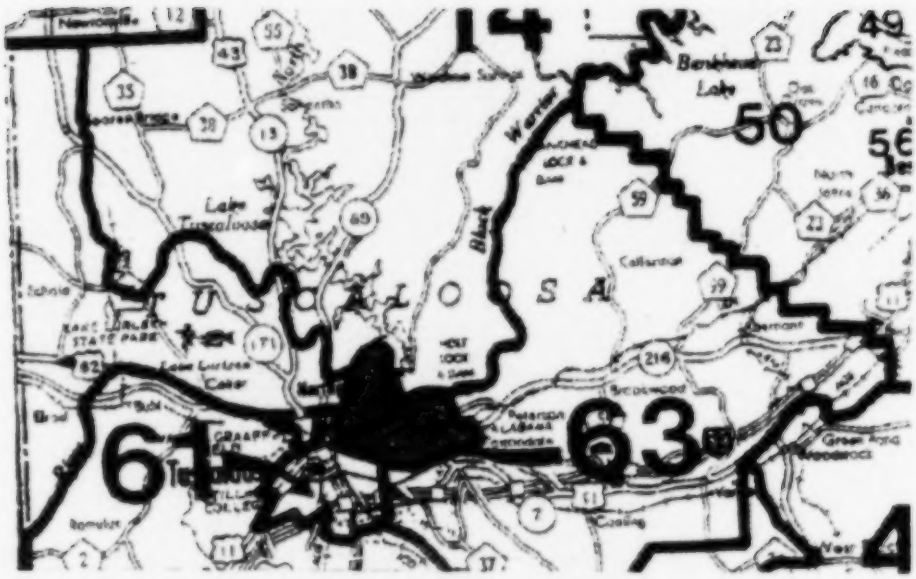


"OLD" HOUSE DISTRICT 63



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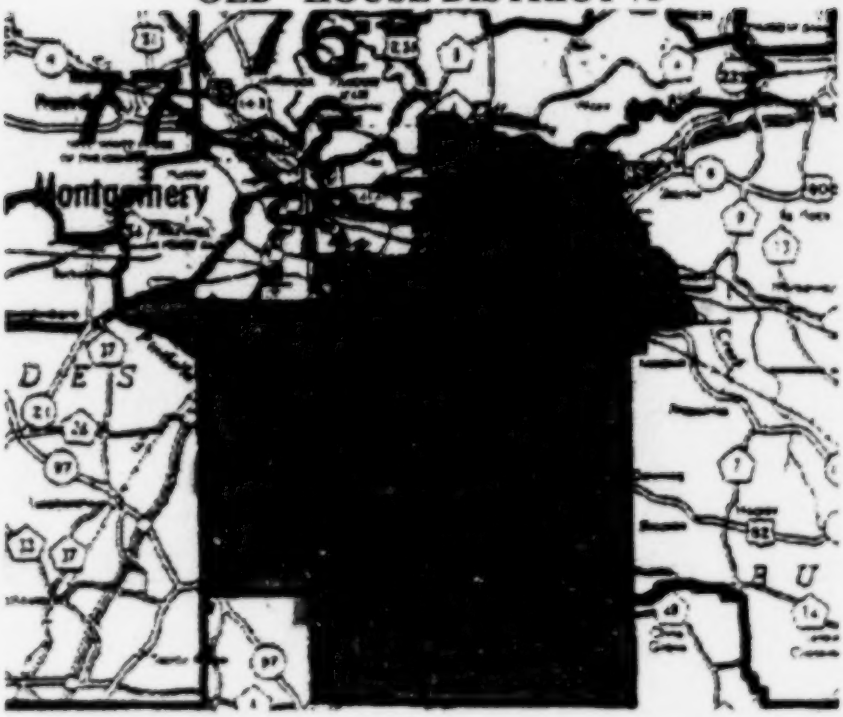
"OLD" HOUSE DISTRICT 75



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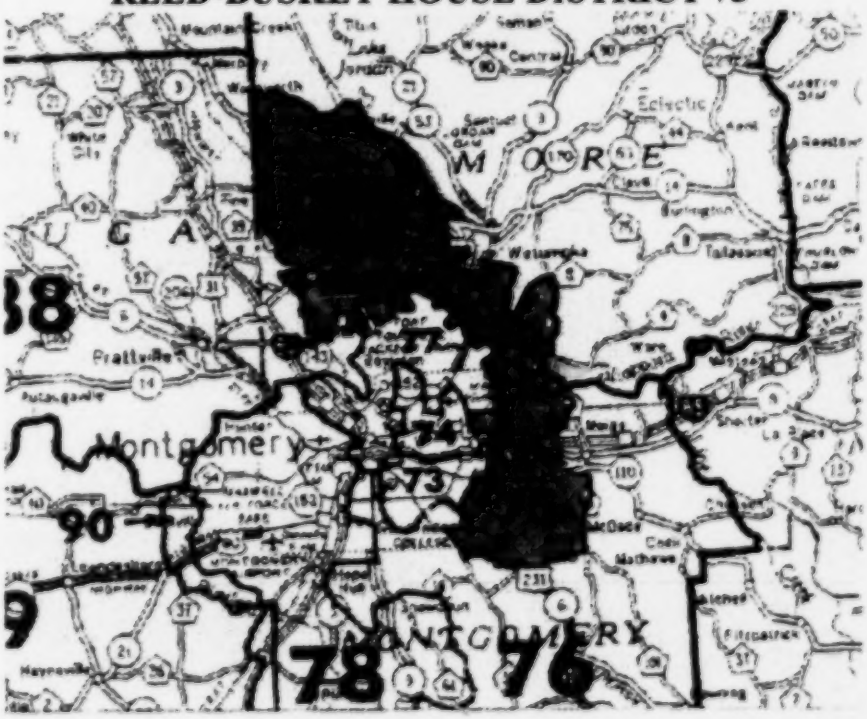
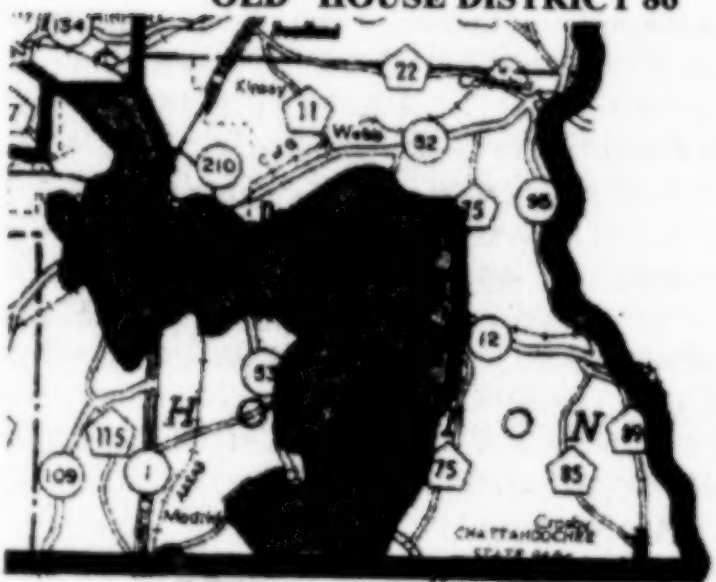


"OLD" HOUSE DISTRICT 86



REED-BUSKEY HOUSE DISTRICT 86

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

JOHN RICE and **CAMILLA L. RICE**, individually and on behalf of a class of non-African-American voters,	)	
Plaintiffs,	)	
v.	)	CA No. 97-A-715-E
HAL SMITH, in his official capacity as Probate Judge of Lee County, Alabama; **JAMES BENNETT**, in his official capacity as Secretary of State of Alabama; **DARRYL SINKFIELD, QUINTON ROSS, BERNEST BROOKS, RUBIN MCKINNON**, and **ANDREW HAYDEN**, individually and on behalf of African-American voters; and **STATE OF ALABAMA**,	)	
Defendants.	)	

STATE DEFENDANTS' RESPONSE TO
THE COURT'S ORDER OF NOVEMBER 21, 1997

The State Defendants, Hal Smith, in his official capacity as Probate Judge of Lee County, Alabama, James Bennett, in his official capacity as Secretary of State of Alabama, and

the State of Alabama, hereby respond to the Court's November 21, 1997 Order and state their position on the effect on this case of the order entered on November 20, 1997 by Judge Charles Price in the case of *Sinkfield v. Camp*, CV 93-689-PR. The State Defendants state their position as follows:

1. The State Court's decision regarding the Rice Plaintiffs' racial gerrymander claims constitutes res judicata as to the Rices' racial gerrymander claims asserted in this action. As a result, any claims challenging those legislative districts in which the Rices reside, Senate Districts 27 and 28 and House Districts 79 and 83, are barred by res judicata.

2. The State Court's decision regarding the Rice Plaintiffs' One-Person, One-Vote claim constitutes res judicata as to the Rices' One-Person, One-Vote claim in this action. Judge Price ruled that House District 92 is the only legislative district that has a population variance greater than 5%, an under population of 5.21%. Because the Rices are not residents of House District 92, they lack standing in that they cannot allege any injury they have suffered by the district's underpopulation. The same holds true for the plaintiffs the Rices seek to add in their amended complaints. None of the proposed new plaintiffs has standing to raise a One-Person, One-Vote claim as to House District 92 in that none of them resides in that district.

3. The State Court's decision regarding the Rice Plaintiffs' claim of vote dilution constitutes res judicata as to the Rices' vote dilution claims in this action. The State Court dismissed Camilla Rice's dilution claim for lack of standing, and dismissed John Rice's dilution claim insofar as it applied to any district other than those in which he lived. Consequently, any claims regarding Senate Districts 27 or 28 or House Districts 79 or 83 are barred by res judicata.

4. To the extent that the Rice Plaintiffs may seek review of the Judge Price's decision in whole or in part by this Court, such attempt is barred by the *Rooker-Feldman* doctrine. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 450 U.S. 462 (1983); *Williams v. Adkinson*, 792 F. Supp. 755 (M.D. Ala. 1992), *aff'd*, 987 F.2d 774 (11th Cir. 1993). The Rice Plaintiffs must seek such review in the Alabama Supreme Court.

5. To the extent that this Court allows additional plaintiffs to intervene in this action, this Court is under a duty to adjudicate the racial gerrymander and vote dilution claims of any plaintiffs residing outside of Senate Districts 27 and 28 and House Districts 79 and 83. Under the authority of *United States v. Hays*, 115 S.Ct. 2431 (1995), and its progeny, for one to have standing to challenge the constitutionality of a legislative district, the claimant must be a resident of the challenged district. For this reason, the Rices' constitutional challenge was limited in state court to those districts in which they reside. Under *Hays*, the Rices lacked standing to challenge any other districts. Although this Court was without authority to require the Rices to intervene in the state court case of *Sinkfield v. Camp*, the Rices chose to voluntarily intervene rather than challenging this Court's order. By intervening, the Rices have now had their claims fully adjudicated as to their districts. However, those plaintiffs residing outside the Rices' legislative districts have not had the constitutionality of their districts determined. While the State Defendants would prefer that this action be completely foreclosed by the state court decision, they do not believe that the State Court is empowered to adjudicate the claims of persons not before it.

Respectfully submitted,

BILL PRYOR
ATTORNEY GENERAL

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the State Defendants
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Assistant Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has this the 25th day of November 1997 been furnished by United States Mail to the following:

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

ANDREW D. THOMPSON, JR., et al.	)
	)
v.	) CIVIL ACTION
	) 97-A-715E
HAL SMITH, JAMES BENNETT, et al.	) Montgomery, Alabama) January 18-25, 2000
DARRYL SINKFIELD, et al.	)
Defendants.	)

* * *

TRIAL TESTIMONY OF DR. JOE L. REED
JANUARY 18, 1999

* * *

[60] JUDGE ALBRITTON: Let me interrupt you a minute. He has asked this several times. He is not asking you with this question to say why you did anything or who you [61] talked to. He is just simply asking you was the race data on the computer screen when you were doing it. If it wasn't, fine. If it was, fine. If you don't know, fine. Just answer that.

A. Yes, the racial data is on the computer screen.

* * *

[64] Q. But when you were drawing those district lines for house district 63, were you conscious when you drew that house district 63 line that you were putting the majority

white populations in his house district 63 when you drew the district?

A. Yes, I knew when I was drafting these districts, one of districts was going to be black and the other was going to be white; majority black and majority white.

TABLE 2
Proportion of Total Population in Split Counties by Alabama County for the Reed-Buskey Court State Senate Plan of 1993

County	SD	Total	White	%	African-Amer.	%
Baldwin	22	17,534	13,166	75.1	4,121	23.5
Baldwin	32	80,746	71,399	88.4	8,519	10.6
Choctaw	22	10,091	7,566	75.0	2,508	24.9
Choctaw	23	5,927	1,347	22.7	4,569	77.1
Clarke	22	11,369	9,521	83.7	1,800	15.8
Clarke	23	15,871	6,006	37.8	9,825	61.9
Colbert	1	39,789	31,914	80.2	7,651	19.2
Colbert	6	11,877	10,906	91.8	917	7.7
Conecuh	22	8,869	6,295	71.0	2,522	28.4
Conecuh	23	5,185	1,768	34.1	3,403	65.6
Dale	29	20,026	13,491	67.4	5,745	28.7
Dale	30	8,967	8,218	91.6	691	7.7
Dale	31	20,640	17,656	85.5	2,411	11.7
DeKalb	8	40,305	39,206	97.3	610	1.5
DeKalb	9	9,788	9,686	99.0	16	0.2
DeKalb	13	4,558	4,088	89.7	402	8.8
Elmore	11	25,937	20,356	78.5	5,448	21.0
Elmore	25	20,894	15,508	74.2	5,221	25.0

County	SD	Total	White	%	African-Amer.	%
Elmore	30	2,379	1,986	83.5	370	15.6
Hale	21	2,703	2,002	74.1	694	25.7
Hale	24	12,795	4,253	33.2	8,520	66.6
Henry	28	11,168	8,476	75.9	2,638	23.6
Henry	29	4,206	1,442	34.3	2,757	65.5
Houston	29	65,330	47,645	72.9	17,036	26.1
Houston	31	16,001	13,868	86.7	1,918	12.0
Jefferson	5	36,239	33,978	93.8	2,136	5.9
Jefferson	15	111,830	102,777	91.9	8,277	7.4
Jefferson	16	94,804	90,749	95.7	2,643	2.8
Jefferson	17	78,546	75,305	95.9	2,958	3.8
Jefferson	18	110,075	36,179	32.9	72,528	65.9
Jefferson	19	110,021	40,378	36.7	69,313	63.0
Jefferson	20	110,010	38,951	35.4	70,716	64.3
Lee	13	10,671	9,116	85.4	1,520	14.2
Lee	27	53,910	47,009	87.2	5,355	9.9
Lee	28	22,475	8,764	39.0	13,532	60.2
Lowndes	23	11,491	2,256	19.6	9,218	80.2
Lowndes	30	1,167	929	79.6	238	20.4
Madison	2	53,837	44,002	81.7	8,264	15.4
Madison	4	40,264	35,810	88.9	2,527	6.3
Madison	7	117,162	78,908	67.3	35,578	30.4
Madison	8	27,649	25,477	92.1	1,747	6.3

County	SD	Total	White	%	African-Amer.	%
Marengo	23	3,987	2,977	74.7	1,008	25.3
Marengo	24	19,097	8,337	43.7	10,737	56.2
Mobile	32	36,675	31,068	84.7	4,753	13.0
Mobile	33	110,147	37,511	34.1	71,973	65.3
Mobile	34	118,515	106,008	89.4	10,098	8.5
Mobile	35	113,306	80,266	70.8	31,048	27.4
Monroe	22	17,547	12,888	73.4	4,403	25.1
Monroe	23	6,421	1,432	22.3	4,969	77.4
Montgomery	25	98,760	87,502	88.6	9,713	9.8
Montgomery	26	110,325	31,918	28.9	77,599	70.3
Morgan	2	8,621	8,363	97.0	161	1.9
Morgan	3	79,647	69,088	86.7	9,876	12.4
Morgan	4	11,775	11,671	99.1	44	0.4
Pickens	6	3,096	1,672	54.0	1,419	45.8
Pickens	21	17,603	10,330	58.9	7,226	41.0
Russell	27	26,819	22,149	82.6	4,486	16.7
Russell	28	20,041	6,324	31.5	13,602	67.9
St. Clair	10	12,371	11,553	93.4	690	5.6
St. Clair	17	37,638	33,585	89.2	3,871	10.3
Shelby	5	3,695	3,404	92.1	269	7.3
Shelby	14	70,433	62,929	89.3	6,950	9.9
Shelby	16	25,230	24,382	96.6	499	2.0

County	SD	Total	White	%	African-Amer.	%
Tuscaloosa	5	10,242	9,914	96.8	279	2.7
Tuscaloosa	21	99,137	84,957	85.7	12,838	12.9
Tuscaloosa	24	41,143	14,527	35.3	26,260	63.8
Winston	3	8,838	8,755	99.1	49	0.5
Winston	5	2,659	2,653	99.8	1	0.0
Winston	6	10,556	10,517	99.6	7	0.1

TABLE 5

Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for the Reed-Buskey Court State Senate Plan of 1993

City/Town	SD	Total	Non-Af. Amer.	%	African-Amer.	%
Abbeville	28	1,595	1,445	90.6	150	9.4
Abbeville	29	1,578	613	38.8	965	61.2
Daleville	29	2,016	1,490	73.9	526	26.1
Daleville	31	3,101	2,751	88.7	350	11.3
Dothan	29	37,672	24,950	66.2	12,722	33.8
Dothan	31	15,928	14,011	88.0	1,917	12.0
Fort Deposit	23	935	129	13.8	806	86.2
Fort Deposit	30	305	275	90.2	30	9.8
Headland	28	2,227	1,984	89.1	243	10.9
Headland	29	1,039	194	18.7	845	81.3
Millbrook	25	5,804	4,872	83.9	932	16.1
Millbrook	30	246	186	75.6	60	24.4
Mobile	32	30	23	76.7	7	23.3
Mobile	33	70,195	24,425	34.8	45,770	65.2
Mobile	34	73,131	65,438	89.5	7,693	10.5
Mobile	35	52,922	29,985	56.7	22,937	43.3
Montgomery	25	93,735	84,816	90.5	8,919	9.5
Montgomery	26	93,371	23,073	24.7	70,298	75.3

City/Town	SD	Total	Non-Af. Amer.	%	African-Amer.	%
Moundville	21	1,345	1,010	75.1	335	24.9
Moundville	24	3	0	0.0	3	100.0
Newton	29	67	66	98.5	1	1.5
Newton	30	6	6	100.0	0	0.0
Newton	31	1,507	1,300	86.3	207	13.7
Northport	5	745	733	98.4	12	1.6
Northport	21	14,683	12,112	82.5	2,571	17.5
Northport	24	1,938	557	28.7	1,381	71.3
Ozark	29	7,515	4,826	64.2	2,689	35.8
Ozark	30	1,761	1,694	96.2	67	3.8
Ozark	31	3,646	3,237	88.8	409	11.2
Tuscaloosa	5	54	54	100.0	0	0.0
Tuscaloosa	21	44,675	38,260	85.6	6,415	14.4
Tuscaloosa	24	33,147	11,903	35.9	21,244	64.1

Source: Alabama State Legislature, Place Population by District Report. All information is based on that in the State Legislature's apportionment system.

TABLE 6

Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for the Reed-Buskey Court State House Plan of 1993

City/Town	HD	Total	Non-Af. Amer.	%	African-Amer.	%
Dothan	85	10,809	1,041	9.6	9,768	90.4
Dothan	86	20,028	17,532	86.6	2,676	13.4
Dothan	87	6,835	6,557	95.9	278	4.1
Dothan	93	15,928	14,011	88.0	1,917	12.0
Kinsey	85	1,528	1,102	72.1	426	27.9
Kinsey	86	151	143	94.7	8	5.3
Millbrook	75	5,804	4,872	83.9	932	16.1
Millbrook	88	246	186	75.6	60	24.4
Montgomery	73	40,396	36,146	89.5	4,250	10.5
Montgomery	74	39,568	36,842	93.1	2,726	6.9
Montgomery	75	13,771	11,822	85.8	1,949	14.2
Montgomery	76	26,407	7,247	27.4	19,160	72.6
Montgomery	77	35,770	9,748	27.3	26,022	72.7
Montgomery	78	31,194	6,078	19.5	25,116	80.5
Newton	85	67	66	98.5	1	1.5
Newton	89	6	6	100.0	0	0.0
Newton	93	1,507	1,300	86.3	207	13.7
Northport	14	745	733	98.4	12	1.6
Northport	61	13,148	10,907	83.0	2,241	17.0
Northport	63	1,535	1,205	78.5	330	21.5

City/Town	HD	Total	Non-Af. Amer.	%	African-Amer.	%
Northport	70	1,938	557	28.7	1,381	71.3
Ozark	85	7,515	4,826	64.2	2,689	35.8
Ozark	89	1,761	1,694	96.2	67	3.8
Ozark	93	3,646	3,237	88.8	409	11.2
Taylor	86	94	94	100.0	0	0.0
Taylor	87	1,258	1,234	98.1	24	1.9
Tuscaloosa	14	54	54	100.0	0	0.0
Tuscaloosa	61	220	168	76.4	52	23.6
Tuscaloosa	62	11,923	9,667	81.1	2,256	18.9
Tuscaloosa	63	32,532	28,425	87.4	4,107	12.6
Tuscaloosa	70	33,107	11,880	35.9	21,227	64.1
Tuscaloosa	72	40	23	57.5	17	42.5

Source: Alabama State Legislature, Place Population by District Report. All information is based on that in the State Legislature's apportionment system.